

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1153 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JAGDISH NAGINBHAI RAJMAL

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 19/04/2000

ORAL JUDGEMENT

#. Commissioner of Police, Baroda City, Baroda, passed

an order on August 23, 1999, in exercise of powers under section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining Jagdish Naginbhai Rajmal under the provisions of the PASA Act.

#. The detaining authority took into consideration three offences registered against the detainee besides statements of three anonymous witnesses. The authority found that the activities of the detainee are that of a dangerous person. That his activities are detrimental to public order and therefore, he is required to be immediately detained. After considering the possibility of resorting to less drastic remedy, the detaining authority came to conclusion that he is required to be detained under the PASA Act in order to immediately preventing him from pursuing his illegal and anti-social activities.

#. Mr. Prajapati, learned advocate appearing for the petitioner has relied only on the ground that the statements of witnesses recorded during the course of investigation in respect of the registered offences have not been considered by the detaining authority and they were not supplied to the detainee even after the demand. He therefore submitted that this would vitiate the order of detention.

#. Mr. Prajapati, learned advocate appearing for the petitioner has relied only on the ground that statements of witnesses recorded during the course of investigation in respect of the registered offences have not been considered by the detaining authority and they were not supplied to the detainee even after the demand. He therefore, submitted that this would vitiate the order of detention.

#. Mr. K.T. Dave, learned AGP has opposed this petition.

#. If the compilation of documents is seen, it is clear that the offences registered against the detainee are pending trial. Copy of charge sheet is supplied to the detainee. A perusal of that charge sheet indicates that there are number of witnesses cited therein, whose statements must have been recorded by the investigating agency. These statements do not appear to have been placed before the detaining authority while considering the proposal for detaining the detainee. Apparently, these statements are not supplied to the detainee also. A representation was made on February 18, 2000 on behalf of

the detenue wherein demand was raised for supplying these statements which are not supplied. The outcome is that the detaining authority has not considered these documents while passing the order of detention. This would vitiate the order of detention in light of the decision in the case of Jiva Veiypuri Madrasi v. Commissioner of Police, 1991 (1) GLH 346. Apart from this, statements are not supplied to the detenue which has affected the right of the detenue of making an effective representation. The order of detention, therefore, cannot be upheld and the petition deserves to be allowed.

#. For the above stated reasons, the petition is allowed. The impugned order of detention dated August 23, 1999 is hereby quashed and set aside. The detenue - Jagdish Naginbhai Rajmal is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

pirzada/-